

CHAPTER 86  
FORMERLY  
SENATE BILL NO. 69

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 151(f), Title 8 of the Delaware Code as follows:

(f) If any corporation shall be authorized to issue more than 1 class of stock or more than 1 series of any class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in § 202 of this title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this section or § 156, § 202(a), § 218(a) or § 364 of this title or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 2. Amend § 202(a), Title 8 of the Delaware Code as follows:

(a) A written restriction or restrictions on the transfer or registration of transfer of a security of a corporation, or on the amount of the corporation's securities that may be owned by any person or group of persons, if permitted by this section and noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices given pursuant to § 151(f) of this title, may be enforced against the holder of the restricted security or securities or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or

notices given pursuant to § 151(f) of this title, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

Section 3. Amend § 203(b)(3), Title 8 of the Delaware Code as follows:

(3) The corporation, by action of its stockholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section; provided that, in addition to any other vote required by law, such amendment to the certificate of incorporation or bylaws must be adopted by the affirmative vote of a majority of the outstanding stock entitled to vote thereon. In the case of a corporation that both (i) has never had a class of voting stock that falls within any of the 2 categories set out in paragraph (b)(4) of this section, and (ii) has not elected by a provision in its original certificate of incorporation or any amendment thereto to be governed by this section, such amendment shall become effective upon (i) in the case of an amendment to the certificate of incorporation, the date and time at which the certificate filed in accordance with § 103 of this title becomes effective thereunder or (ii) in the case of an amendment to the bylaws, the date of the adoption of such amendment. In all other cases, an amendment adopted pursuant to this paragraph shall become effective (i) in the case of an amendment to the certificate of incorporation, 12 months after the date and time at which the certificate filed in accordance with § 103 of this title becomes effective thereunder or (ii) in the case of an amendment to the bylaws, 12 months after the date of the adoption of such amendment, and, in either case, the election not to be governed by this section shall not apply to any business combination between such corporation and any person who became an interested stockholder of such corporation on or before (A) in the case of an amendment to the certificate of incorporation, the date and time at which the certificate filed in accordance with § 103 of this title becomes effective thereunder or (B) in the case of an amendment to the bylaws, the date of the adoption of such amendment. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

Section 4. Amend the final sentence of § 203(b), Title 8 of the Delaware Code as follows:

Notwithstanding paragraphs (b)(1), (2), (3) and (4) of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section; provided that any such amendment to the certificate of incorporation shall not apply to restrict a business combination between the corporation and an interested stockholder of the corporation if the interested stockholder became such before the date and time at which the certificate filed in accordance with § 103 of this title becomes effective thereunder.

Section 5. Amend § 219(a), Title 8 of the Delaware Code as follows:

(a) The corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address

of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 6. Amend § 219(c), Title 8 of the Delaware Code as follows:

(c) For purposes of this chapter, “stock ledger” means one or more records administered by or on behalf of the corporation in which the names of all of the corporation’s stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with § 224 of this title. The stock ledger shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of stockholders.

Section 7. Amend § 224, Title 8 of the Delaware Code as follows:

§ 224. Form of records.

Any records administered by or on behalf of the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in § 219 and § 220 of this title, (ii) record the information specified in § 156, § 159, § 217(a) and § 218 of this title, and (iii) record transfers of stock as governed by Article 8 of subtitle I of Title 6. Any corporation shall convert any records so kept into clearly legible paper form upon the request of any person entitled to inspect such records pursuant to any provision of this chapter. When records are kept in such manner, a clearly legible paper form prepared from or by means of the information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases) shall be valid and admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

Section 8. Amend § 228(c), Title 8 of the Delaware Code as follows:

(c) No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a written consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

Section 9. Amend § 228(d)(1), Title 8 of the Delaware Code as follows:

(d)(1) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a stockholder, member or proxyholder, shall be deemed to be written and signed for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (A) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or persons authorized to act for the stockholder, member or proxyholder and (B) the date on which such stockholder, member or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded if, to the extent and in the manner provided by resolution of the board of directors or governing body of the corporation.

Section 10. Amend § 228(e), Title 8 of the Delaware Code as follows:

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders or members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in this section. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall

state, in lieu of any statement required by such section concerning any vote of stockholders or members, that written consent has been given in accordance with this section.

Section 11. Amend § 232(c), Title 8 of the Delaware Code as follows:

(c) For purposes of this chapter, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 12. Amend § 251(a), Title 8 of the Delaware Code as follows:

(a) Any 2 or more corporations of this State may merge into a single surviving corporation, which may be any 1 of the constituent corporations or may consolidate into a new resulting corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

Section 13. Amend § 251(b)(6), Title 8 of the Delaware Code as follows:

(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of the surviving or resulting corporation or of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for any other arrangement with respect thereto, consistent with § 155 of this title.

Section 14. Amend § 251(c), Title 8 of the Delaware Code as follows:

(c) The agreement required by subsection (b) of this section shall be submitted to the stockholders of each constituent corporation at an annual or special meeting for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at the stockholder’s address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation, provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective, in accordance with § 103 of this title. In lieu of filing the agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states:

(1) The name and state of incorporation of each of the constituent corporations;

- (2) That an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with this section;
- (3) The name of the surviving or resulting corporation;
- (4) In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (5) In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;
- (6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation, stating the address thereof; and
- (7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation.

Section 15. Amend § 252, Title 8 of the Delaware Code as follows:

§ 252. Merger or consolidation of domestic and foreign corporations; service of process upon surviving or resulting corporation.

(a) Any 1 or more corporations of this State may merge or consolidate with 1 or more foreign corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, which may be a corporation of the jurisdiction of organization of any 1 of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) The mode of carrying the same into effect;
- (3) In the case of a merger in which the surviving corporation is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(4) In the case of a consolidation in which the resulting corporation is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

(5) The manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;

(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of the surviving or resulting corporation or of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and

(7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the certificate of incorporation (or equivalent document) of a surviving or resulting foreign corporation) by the laws of each jurisdiction under which any of the foreign corporations are organized.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is organized, and, in the case of a corporation of this State, in the same manner as is provided in § 251 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states:

(1) The name and jurisdiction of organization of each of the constituent corporations;

- (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with this subsection;
- (3) The name of the surviving or resulting corporation;
- (4) In the case of a merger in which the surviving corporation is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (5) In the case of a consolidation in which the resulting corporation is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
- (6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation and the address thereof;
- (7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation;
- (8) If the corporation surviving or resulting from the merger or consolidation is a corporation of this State, the authorized capital stock of each constituent corporation which is not a corporation of this State; and
- (9) The agreement, if any, required by subsection (d) of this section.

(d) If the corporation surviving or resulting from the merger or consolidation is a foreign corporation, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, directed to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by



the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(e) Section 251(d) of this title shall apply to any merger or consolidation under this section; § 251(e) of this title shall apply to a merger under this section in which the surviving corporation is a corporation of this State; and § 251(f) and (h) of this title shall apply to any merger under this section.

Section 16. Amend § 253(a), Title 8 of the Delaware Code as follows:

§ 253. Merger of parent corporation and subsidiary corporation or corporations.

(a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by a corporation of this State or a foreign corporation, and (2) 1 or more of such corporations is a corporation of this State, unless the laws of the jurisdiction or jurisdictions under which the foreign corporation or corporations are organized prohibit such merger, the parent corporation may either merge the subsidiary corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such other subsidiary corporations, into 1 of the subsidiary corporations by executing, acknowledging and filing, in accordance with § 103 of this title, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation, or the cancellation of some or all of such shares. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation be not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a

majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting duly called and held after 20 days' notice of the purpose of the meeting mailed to each such stockholder at the stockholder's address as it appears on the records of the corporation if the parent corporation is a corporation of this State or state that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is a foreign corporation. If the surviving corporation is a foreign corporation:

(1) Section 252(d) of this title or § 258(c) of this title, as applicable, shall also apply to a merger under this section; and

(2) The terms and conditions of the merger shall obligate the surviving corporation to provide the agreement, and take the actions, required by § 252(d) of this title or § 258(c) of this title, as applicable.

Section 17. Amend § 253(e), Title 8 of the Delaware Code as follows:

(e) [Repealed.]

Section 18. Amend § 253(f), Title 8 of the Delaware Code as follows:

(e) This section shall apply to nonstock corporations if the parent corporation is such a corporation and is the surviving corporation of the merger; provided, however, that references to the directors of the parent corporation shall be deemed to be references to members of the governing body of the parent corporation, and references to the board of directors of the parent corporation shall be deemed to be references to the governing body of the parent corporation.

Section 19. Amend § 253(g), Title 8 of the Delaware Code as follows:

(f) Nothing in this section shall be deemed to authorize the merger of a corporation with a charitable nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Section 20. Amend § 254, Title 8 of the Delaware Code as follows:

§ 254. Merger or consolidation of domestic corporations and joint-stock or other associations.

(a) The term "joint-stock association" as used in this section, includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed or organized by agreement or under statutory authority or otherwise and whether formed or organized under the laws of this State or any other jurisdiction, but does not include a corporation, partnership or limited liability company. The term "stockholder" as used in this section, includes every member of such joint-stock association or holder of a share of stock or other evidence of financial or beneficial interest therein.

(b) Any 1 or more corporations of this State may merge or consolidate with 1 or more joint-stock associations, unless the laws of the jurisdiction or jurisdictions under which such joint-stock association or associations are formed or organized prohibit such merger or consolidation. Such corporation or corporations and such 1 or more joint-stock associations may merge into a single surviving corporation or joint-stock association,

which may be any one of such corporations or joint-stock associations, or they may consolidate into a new resulting corporation of this State or a joint-stock association, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or resulting entity may be organized for profit or not organized for profit, and if the surviving or resulting entity is a corporation, it may be a stock corporation of this State or a nonstock corporation of this State.

(c) Each such corporation and joint-stock association shall enter into a written agreement of merger or consolidation. The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) The mode of carrying the same into effect;
- (3) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- (5) The manner, if any, of converting the shares of stock of each stock corporation, the interest of members of each nonstock corporation, and the shares, membership or financial or beneficial interests in each of the joint-stock associations into shares or other securities of a stock corporation or membership interests of a nonstock corporation or into shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation, or of cancelling some or all of such shares, memberships or financial or beneficial interests, and, if any shares of any such stock corporation, any membership interests of any such nonstock corporation or any shares, memberships or financial or beneficial interests in any such joint-stock association are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation or into shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation, membership interests of any such nonstock corporation, or shares, memberships or financial or beneficial interests of any such joint-stock association are to receive in exchange for, or upon conversion of such shares, membership interests or shares, memberships or financial or beneficial interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or

other securities of the stock corporation or membership interests of the nonstock corporation or shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation;

(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights, other securities or interests of the surviving or resulting entity or of fractional shares, rights, other securities or interests of any other corporation or entity the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and

(7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the governing documents of a surviving joint-stock association) or required to establish and maintain a joint-stock association by the laws under which the joint-stock association is formed or organized.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(d) The agreement required by subsection (c) of this section shall be adopted, approved, certified, executed and acknowledged by each of the stock or nonstock corporations in the same manner as is provided in § 251 or § 255 of this title, respectively, and in the case of the joint-stock associations in accordance with the laws of the jurisdiction under which they are formed or organized. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting entity may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states:

- (1) The name, jurisdiction of formation or organization and type of entity of each of the constituent entities;
- (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
- (3) The name of the surviving or resulting corporation or joint-stock association;
- (4) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments

or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

(5) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation or joint-stock association and the address thereof;

(7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation or joint-stock association, on request and without cost, to any stockholder or member of any constituent entity; and

(8) The agreement, if any, required by § 252(d) of this title.

(e) Sections 251(d), 251(e) to the extent the surviving entity is a corporation of this State, 251(f), 252(d), 259 through 262 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and joint-stock associations; the word “corporation” where applicable, as used in those sections, being deemed to include joint-stock associations as defined herein. Where the surviving or resulting entity is a corporation, for purposes of the laws of this State, the personal liability, if any, of any stockholder of a joint-stock association existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation or charitable joint-stock association into a stock corporation or joint-stock association if the charitable status of such nonstock corporation or joint-stock association would be thereby lost or impaired, but a stock corporation or a joint-stock association may be merged into a charitable nonstock corporation or charitable joint-stock association which shall continue as the surviving corporation or joint-stock association.

Section 21. Amend § 255(a), Title 8 of the Delaware Code as follows:

(a) Any 2 or more nonstock corporations of this State, whether or not organized for profit, may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

Section 22. Amend § 255(b), Title 8 of the Delaware Code as follows:

(b) Subject to subsection (d) of this section, the governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) The mode of carrying the same into effect;

- (3) In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- (5) The manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such memberships or membership interests, and, if any memberships or membership interests of any of the constituent corporations are not to remain outstanding, to be converted solely into memberships or membership interests of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such memberships or membership interests are to receive in exchange for, or upon conversion of, such memberships or membership interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of memberships or membership interests of the surviving or resulting corporation; and
- (6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title.

The agreement so adopted shall be executed and acknowledged in accordance with § 103 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

Section 23. Amend § 256(a), Title 8 of the Delaware Code as follows:

(a) Any 1 or more nonstock corporations of this State may merge or consolidate with 1 or more foreign nonstock corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign nonstock corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting nonstock corporation formed by the consolidation, which may be a corporation of the jurisdiction of organization of any 1 of the constituent corporations, pursuant to an agreement of merger or

consolidation, as the case may be, complying and approved in accordance with this section. The term “foreign nonstock corporation” means a nonstock corporation organized under the laws of any jurisdiction other than this State.

Section 24. Amend § 256(b), Title 8 of the Delaware Code as follows:

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) The mode of carrying the same into effect;
- (3) In the case of a merger in which the surviving corporation is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation in which the resulting corporation is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- (5) The manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such memberships or membership interests, and, if any memberships or membership interests of any of the constituent corporations are not to remain outstanding, to be converted solely into memberships or membership interests of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such memberships or membership interests are to receive in exchange for, or upon conversion of, such memberships or membership interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of memberships or membership interests of the surviving or resulting corporation;
- (6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and
- (7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the certificate of incorporation (or

equivalent document) of a surviving foreign nonstock corporation) by the laws of jurisdiction under which any of the foreign nonstock corporations are organized.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

Section 25. Amend § 256(c), Title 8 of the Delaware Code as follows:

(c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is organized and, in the case of a Delaware corporation, in the same manner as is provided in § 255 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 255 of this title with respect to the merger of nonstock corporations of this State. Insofar as they may be applicable, the provisions set forth in the last sentence of § 252(c) of this title shall apply to a merger under this section, and the reference therein to “stockholder” shall be deemed to include “member” hereunder.

Section 26. Amend § 256(d), Title 8 of the Delaware Code as follows:

(d) If the corporation surviving or resulting from the merger or consolidation is a foreign nonstock corporation, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon



the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

Section 27. Amend § 257(a), Title 8 of the Delaware Code as follows:

(a) Any 1 or more nonstock corporations of this State, whether or not organized for profit, may merge or consolidate with 1 or more stock corporations of this State, whether or not organized for profit. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving constituent corporation or the resulting corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

Section 28. Amend § 257(b), Title 8 of the Delaware Code as follows:

(b) The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) The mode of carrying the same into effect;
- (3) In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- (5) The manner, if any, of converting the shares of stock of a stock corporation and the memberships or membership interests of a nonstock corporation into shares or other securities of a stock corporation or memberships or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or memberships or membership interests, and, if any shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or memberships or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or memberships or membership interests, and the surrender of any

certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or memberships or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

(6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of the surviving or resulting corporation or of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

Section 29. Amend § 257(d), Title 8 of the Delaware Code as follows:

(d) Section 251(e) of this title shall apply to a merger under this section; § 251(d) of this title shall apply to any constituent stock corporation participating in a merger or consolidation under this section; and § 251(f) of this title shall apply to any constituent stock corporation participating in a merger under this section.

Section 30. Amend § 258, Title 8 of the Delaware Code as follows:

§ 258. Merger or consolidation of domestic and foreign stock and nonstock corporations.

(a) Any 1 or more corporations of this State, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with 1 or more foreign corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, which may be a corporation of the jurisdiction of organization of any 1 of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or resulting corporation may be either a domestic or foreign stock corporation or a domestic or foreign nonstock corporation, as shall be specified in the agreement of merger or consolidation required by subsection (b) of this section. For purposes of this section, the term “foreign corporation” includes a nonstock corporation organized under the laws of any jurisdiction other than this State.

(b) The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in § 257 of this title in the case of Delaware corporations. The agreement of merger or consolidation shall be as provided in § 257 of this title and also set forth such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the

certificate of incorporation (or equivalent document) of a surviving foreign corporation) by the laws of the jurisdiction or jurisdictions which are stated in the agreement to be the laws under which the foreign corporation or corporations are organized. The agreement, in the case of foreign corporations, shall be adopted, approved, certified, executed and acknowledged in accordance with the laws under which each is organized.

(c) The requirements of § 252(d) of this title as to the appointment of the Secretary of State to receive process and the manner of serving the same in the event the surviving or resulting corporation is a foreign corporation shall also apply to mergers or consolidations effected under this section and such appointment, if any, shall be included in the certificate of merger or consolidation, if any, filed pursuant to subsection (b) of this section. Section 251(e) of this title shall apply to mergers effected under this section if the surviving corporation is a corporation of this State; § 251(d) of this title shall apply to any constituent corporation participating in a merger or consolidation under this section (provided, however, that for purposes of a constituent nonstock corporation, references to the board of directors, to stockholders, and to shares shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests of the corporation, as applicable, respectively); and § 251(f) of this title shall apply to any constituent stock corporation of this State participating in a merger under this section.

(d) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 31. Amend § 263, Title 8 of the Delaware Code as follows:

§ 263. Merger or consolidation of domestic corporations and partnerships; service of process upon surviving or resulting corporation or partnership.

(a) Any 1 or more corporations of this State may merge or consolidate with 1 or more partnerships (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), unless the laws of the jurisdiction or jurisdictions under which such partnership or partnerships are formed prohibit such merger or consolidation. Such corporation or corporations and such 1 or more partnerships may merge with or into a surviving corporation, which may be any 1 of such corporations, or they may merge with or into a surviving partnership, which may be any 1 of such partnerships, or they may consolidate into a new resulting corporation, which corporation shall be a corporation of this State, or a partnership formed pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The term “partnership” as used in this section includes any partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) formed under the laws of this State or the laws of any other jurisdiction.

(b) Each such corporation and partnership shall enter into a written agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

- (2) The mode of carrying the same into effect;
- (3) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- (5) The manner, if any, of converting the shares of stock of each such corporation and the partnership interests of each such partnership into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or interests, and if any shares of any such corporation or any partnership interests of any such partnership are not to remain outstanding, to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation;
- (6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights, other securities or interests of the surviving or resulting corporation or partnership or of any other corporation or entity the shares, rights, other securities or interests of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and
- (7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the partnership agreement and statement of partnership existence or certificate of limited partnership (or equivalent documents) of the surviving partnership) by the laws of each jurisdiction under which any of the partnerships are formed.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as

used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(c) The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and, in the case of the partnerships, in accordance with their partnership agreements and in accordance with the laws of the jurisdiction under which they are formed. If the surviving or resulting entity is a partnership, in addition to any other approvals, each stockholder of a merging corporation who will become a general partner of the surviving or resulting partnership must approve the agreement of merger or consolidation. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 or § 255 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation or partnership may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, if the surviving or resulting entity is a corporation, or by a general partner, if the surviving or resulting entity is a partnership, which states:

- (1) The name, jurisdiction of formation or organization and type of entity of each of the constituent entities;
- (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
- (3) The name of the surviving or resulting corporation or partnership;
- (4) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (5) In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
- (6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation or partnership and the address thereof;
- (7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any partner of any constituent partnership; and
- (8) The agreement, if any, required by subsection (d) of this section.

(d) If the entity surviving or resulting from the merger or consolidation is a partnership formed under the laws of a jurisdiction other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation or partnership of this State, as well as

for enforcement of any obligation of the surviving or resulting corporation or partnership arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or partnership thereof by letter, directed to such surviving or resulting corporation or partnership at its address so specified, unless such surviving or resulting corporation or partnership shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(e) Sections 251(d)-(f), 255(c) (second sentence) and (d)-(f), 259-261 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and partnerships.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a partnership, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a partnership may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 32. Amend § 264, Title 8 of the Delaware Code as follows:

§ 264. Merger or consolidation of domestic corporations and limited liability companies; service of process upon surviving or resulting corporation or limited liability company.

(a) Any 1 or more corporations of this State may merge or consolidate with 1 or more limited liability companies, unless the laws of the jurisdiction or jurisdictions under which such limited liability company or limited liability companies are formed prohibit such merger or consolidation. Such corporation or corporations and such 1 or more limited liability companies may merge with or into a surviving corporation, which may be any 1 of such corporations, or they may merge with or into a surviving limited liability company, which may be any 1 of such

limited liability companies, or they may consolidate into a new resulting corporation, which corporation shall be a corporation of this State, or a limited liability company pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The term “limited liability company” as used in this section includes any limited liability company formed under the laws of this State or the laws of any other jurisdiction.

(b) Each such corporation and limited liability company shall enter into a written agreement of merger or consolidation. The agreement shall state:

- (1) The terms and conditions of the merger or consolidation;
- (2) The mode of carrying the same into effect;
- (3) In the case of a merger in which the surviving entity is a corporation of this State, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (4) In the case of a consolidation in which the resulting entity is a corporation of this State, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
- (5) The manner, if any, of converting the shares of stock of each such corporation and the limited liability company interests of each such limited liability company into shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or interests, and if any shares of any such corporation or any limited liability company interests of any such limited liability company are not to remain outstanding, to be converted solely into shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company interests are to receive in exchange for, or upon conversion of such shares or limited liability company interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation;
- (6) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights, other securities or interests of the surviving or resulting corporation or limited liability company or of any other corporation or entity the shares, rights,

other securities or interests of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with § 155 of this title; and

(7) Such other provisions or facts as shall be required to be set forth in an agreement of merger or consolidation (including any provision for amendment of the limited liability company agreement and certificate of formation (or equivalent documents) of the surviving limited liability company) by the laws of each jurisdiction under which any of the limited liability companies are formed.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(c) The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and, in the case of the limited liability companies, in accordance with their limited liability company agreements and in accordance with the laws of the jurisdiction under which they are formed. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 or § 255 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation or limited liability company may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, if the surviving or resulting entity is a corporation, or by an authorized person, if the surviving or resulting entity is a limited liability company, which states:

- (1) The name and jurisdiction of formation or organization of each of the constituent entities;
- (2) That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
- (3) The name of the surviving or resulting corporation or limited liability company;
- (4) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
- (5) In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
- (6) That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation or limited liability company and the address thereof;



(7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any member of any constituent limited liability company; and

(8) The agreement, if any, required by subsection (d) of this section.

(d) If the entity surviving or resulting from the merger or consolidation is a limited liability company formed under the laws of a jurisdiction other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation or limited liability company of this State, as well as for enforcement of any obligation of the surviving or resulting corporation or limited liability company arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to the provisions of § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or limited liability company thereof by letter, directed to such surviving or resulting corporation or limited liability company at its address so specified, unless such surviving or resulting corporation or limited liability company shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(e) Sections 251(d)-(f), 255(c) (second sentence) and (d)-(f), 259-261 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and limited liability companies.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a limited liability company, if the charitable status of such nonstock corporation would thereby be lost or impaired;

but a limited liability company may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 33. Amend § 267(a), Title 8 of the Delaware Code as follows:

(a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by an entity, and (2) 1 or more of such corporations is a corporation of this State, unless the laws of the jurisdiction or jurisdictions under which such entity or such foreign corporations are formed or organized prohibit such merger, the entity having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations by (a) authorizing such merger in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized and (b) acknowledging and filing with the Secretary of State, in accordance with § 103 of this title, a certificate of such ownership and merger certifying (i) that such merger was authorized in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, such certificate executed in accordance with such entity's governing documents and in accordance with the laws of the jurisdiction under which such entity is formed or organized and (ii) the type of entity of each constituent entity to the merger; provided, however, that in case the entity shall not own all the outstanding stock of all the corporations, parties to a merger as aforesaid, (A) the certificate of ownership and merger shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving constituent party upon surrender of each share of the corporation or corporations not owned by the entity, or the cancellation of some or all of such shares and (B) such terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving entity that is a partnership (other than a limited liability partnership or a limited liability limited partnership). Any of the terms of the merger may be made dependent upon facts ascertainable outside of the certificate of ownership and merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the certificate of ownership and merger. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the entity. If the surviving constituent party is an entity formed or organized under the laws of a jurisdiction other than this State, (1) § 252(d) of this title shall also apply to a merger under this section; if the surviving constituent party is the entity, the word "corporation" where applicable, as used in § 252(d) of this title, shall be deemed to include an entity as defined herein; and (2) the terms and conditions of the merger shall obligate the surviving constituent party to provide the agreement, and take the actions, required by § 252(d) of this title.

Section 34. Amend § 267(d), Title 8 of the Delaware Code as follows:

(d) [Repealed.]

Section 35. Amend § 267(e), Title 8 of the Delaware Code as follows:

(d) As used in this section only, the term:

(1) “constituent party” means an entity or corporation to be merged pursuant to this section;

(2) “entity” means a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), limited liability company, any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed or organized by agreement or under statutory authority or otherwise and whether formed or organized under the laws of this State or the laws of any other jurisdiction; and

(3) “governing documents” means a partnership agreement, limited liability company agreement, articles of association or any other instrument containing the provisions by which an entity is formed or organized.

Section 36. Amend § 364, Title 8 of the Delaware Code as follows:

§ 364 Stock certificates; notices regarding uncertificated stock.

Any stock certificate issued by a public benefit corporation shall note conspicuously that the corporation is a public benefit corporation formed pursuant to this subchapter. Any notice given by a public benefit corporation pursuant to § 151(f) of this title shall state conspicuously that the corporation is a public benefit corporation formed pursuant to this subchapter.

Section 37. Amend § 374, Title 8 of the Delaware Code as follows:

§ 374. Annual report.

Annually on or before June 30, a foreign corporation doing business in this State shall file a report with the Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by the corporation’s president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual’s name is signed on a certification attached to a corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however the official title or position of the individual signing the corporate report shall be designated. The report shall contain the following information:

1. The location of its registered office in this State, which shall include the street, number, city and postal code;
2. The name of the agent upon whom service of process against the corporation may be served;
3. The location of the principal place of business of the corporation, which shall include the street, number, city, state or foreign country; and
4. The names and addresses of all the directors as of the filing date of the report and the name and address of the officer who signs the report.

If any officer or director of a foreign corporation required to file an annual report with the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.

Section 38. Amend § 502(a), Title 8 of the Delaware Code as follows:

(a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by the corporation's president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on the report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual signing the corporate report shall be designated. The report shall contain the following information:

- (1) The location of its registered office in this State, which shall include the street, number, city and postal code;
- (2) The name of the agent upon whom service of process against the corporation may be served;
- (3) The location of the principal place of business of the corporation, which shall include the street, number, city, state or foreign country;
- (4) The names and addresses of all the directors as of the filing date of the report and the name and address of the officer who signs the report; provided, that other than an initial report, all reports shall list a director or directors excepting any report filed in conjunction with a certificate of dissolution filed by an incorporator pursuant to § 274 of this title or a certificate of dissolution filed pursuant to § 275(c) of this title;
- (5) The number of shares and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue;
- (6) If exempt from taxation for any cause, the specific facts entitling the corporation to exemption from taxation; and
- (7) Such additional information, schedules and attachments as the Secretary shall require to ascertain the franchise tax due to the State.

Section 39. Sections 1 through 7 and 11 through 38 shall be effective on August 1, 2017.

Section 40. Sections 8 through 10 shall be effective only for actions taken by consent having a record date, for purposes of determining the stockholders or members entitled to consent, on or after August 1, 2017.

Approved July 21, 2017